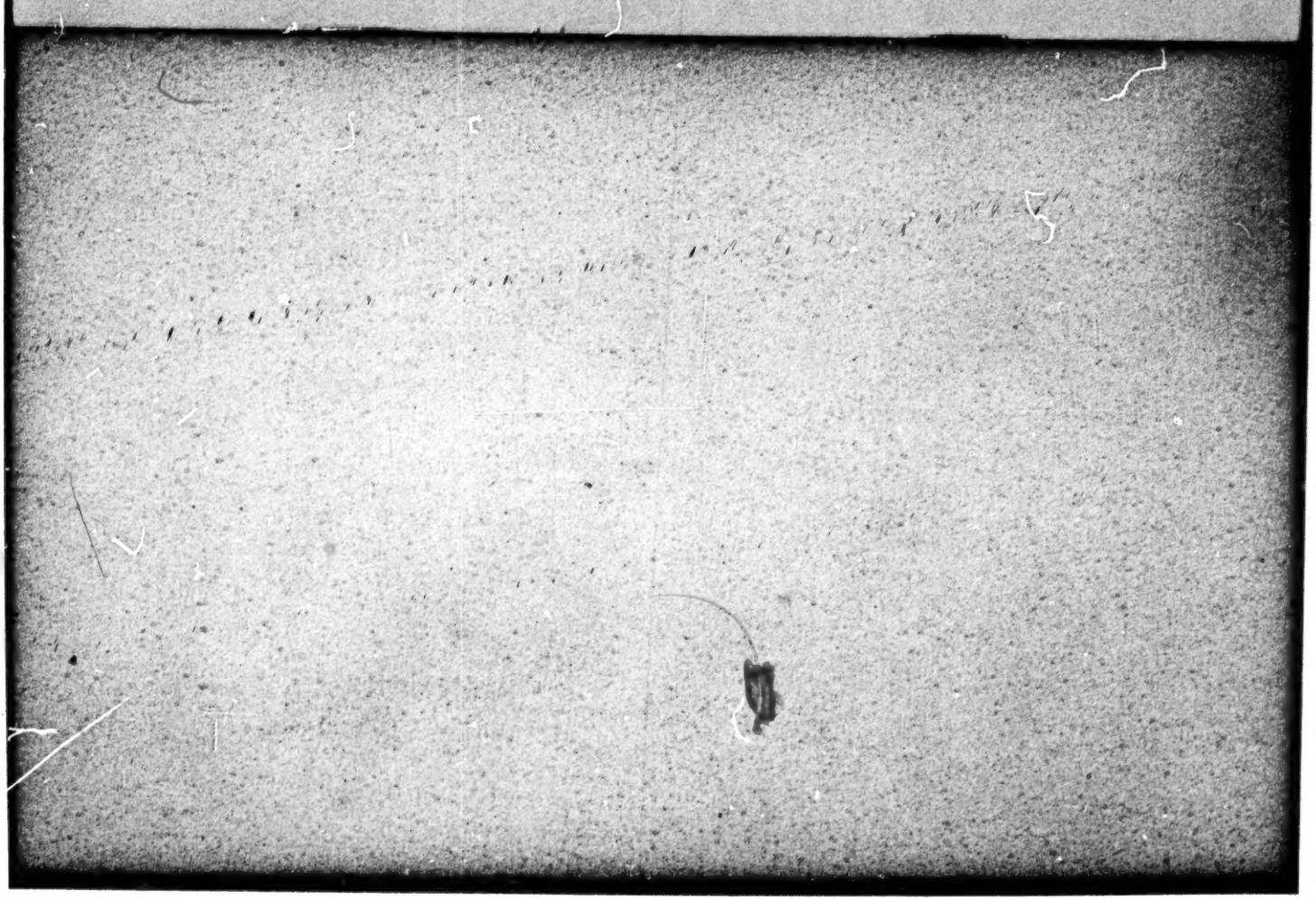

SUPREME COURT, U. S.

FILED

JUL 30 1974

MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1406

DANIEL CHAPMAN and JACQUE STOCKMAN,
Appellants,

vs.

BEN MEIER, Secretary of State for the
State of North Dakota,
Appellee.

APPELLEE'S BRIEF

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DANIEL CHAPMAN and JACQUE STOCKMAN,
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Appellee.

APPELLEE'S BRIEF

STATEMENT

In November of 1971, a 1965 District Court-fashioned reapportionment plan was challenged as being no longer valid under the 14th Amendment to the US Constitution in light of the 1970 census. The Court declared the 1965 plan invalid and fashioned a reapportionment plan which is being challenged by the appellants in this appeal on the contention that the Court-fashioned plan contains multi-member districts and that the variance in population is too great.

The appellants' brief adequately sets forth the opinion below, jurisdiction, questions presented, and statements and it would not serve any useful purpose to recite them again, except the questions presented can be restated as follows:

> "The primary question involved here is whether or not the Court-fashioned plan meets the US Constitutional requirements."

ARGUMENT

Multi-Member Districts

Appellants' brief on page nine seems to emphasize that the state has required single member Senate districts, but completely disregards the fact that the state throughout its history provided for multi-member representatives in the House.

The North Dakota Supreme Court in *State ex rel. Stockman* v. *Anderson,* 184 NW2d 53 made a brief summation of the North Dakota history on this subject and on page 57, specifically recognized that the Senate until 1965 was based on area rather than population. The area prior to 1965 consisted of single or multiple county or subdivisions of counties. No part of one county was adjoined to another. The taking of a portion of an area from one county and adding to another county for the purposes of creating a legislative district was not permitted under the earlier provisions of the North Dakota Constitution. Counties in a sense constituted the basic factor in the creation of legislative districts.

Sections 26, 29 and 35 of the North Dakota Constitution have been declared invalid and unconstitutional. Whether the prior provisions were restored or revived is doubtful even though there is some North Dakota case law which would suggest such a concept. The anti-reviving statute 1-02-16 of the North Dakota Century Code in all probability would have no application here. Even if the provisions were revived, which is doubtful, there is a serious question whether they could meet the constitutional standards under the decisions in *Stockman* v. *Anderson,* 184 NW2d 53.

The recent rejection of the constitutional measure (A-9 motion to affirm) which would have provided for

single member districts constitutes legislative direction by the people and would serve as a basis for an exception to the statement in the case of *Connor* v. *Johnson*, 29 LEd2d 268, 402 US 690. Centainly if the Court in the *Connor* case intended to issue a mandate it would have left out the qualifying terms or provisions, "preferable" and "as a general matter" and would have used terms or language which would have left no doubt.

Under the present plan the multi-member legislative districts will elect Representatives and Senators as follows:

District	Senators	Representatives	Population
5	4	8	47,886
18	4	8	50,244
21	5	10	60,240
29	2	4	23,550
32	3	6	35,595

From this it can be seen that the multi-member districts will be able to elect only 18 Senators out of 51, and 36 Representatives out of 102 which equals 35.29%.

There is no evidence in the record which would suggest a need for the creation of single member districts because of any groups or individuals which have or are entitled to special constitutional recognition. In this respect the record is completely void of any reason why single member districts should have been created.

The appellants' only ground or basis for claiming that single member districts should have been created is based on the *Connor* v. *Johnson* decision, but because of the historical background and the rejection of the single member district concept, we believe the lower court was justified in continuing the use of multi-member legislative districts.

Variance in Population

As to population the Supreme Court in *Gaffney* v. *Cummings*, 37 LEd2d 298 contains a very enlightening discussion relating to the census figures and its relation to the weight of a person's vote. The census taking process merely establishes the location of a person at a specific time but it does not nor does it attempt to establish where such persons will vote. It's common knowledge that people do not always vote in the same place where they are located for the purposes of census enumeration. We are satisfied the Court was aware that many persons are located in Burleigh County at the seat of the government in North Dakota and are counted for Burleigh County in the census, but a large number of such persons retain their voting or legal residence in "their home county or precinct". Similarly students attending institutions of higher learning can be located at the school for census purposes whereas in reality many of these students, 18 years or more, vote at the precinct where their parents live and not at the precinct where the school is located.

The constant shifting of population coupled with change in residence sequences for voting purposes (now 30 days in North Dakota for precincts, county and state whereas before it was one year in state, 90 days in county and 30 days in precinct), it is safe to assume that many persons change voting residence more frequently and in greater numbers.

In the final analysis population figures serve only as a basis on which one can make a mere educated guess as where a person might vote which is a critical item in our representative form of government. However, the census data does not provide this information.

North Dakota does not use block voting and any elector in the general election may vote for a candidate of any

party. He may vote for as many candidates as there are positions to be filled.

The trend of the population discloses a decrease and a shift from the rural to urban areas as evidenced by the compilation of census data by the Secretary of State in appendix, page 12, of this brief. Pembina County District 11, is an area which is somewhat different from other areas in the state because of missile base activity which has brought additional persons into that area.

In District 11 (Pembina County) the city of Cavalier grew from 1,381-1970 to 2,433-November 13, 1972, a difference of plus 1,052. The city of Walhalla grew from 1,470 in 1970 to 1,636-October, 1973, a difference of plus 166. District 11 thus had a gain of 1,218 from 1970 to October, 1973, which would reduce the variance to less than two percent (see appendix, pages 9 and 12 of this brief).

In District 16 (part of Walsh) the city of Park River (Walsh County) grew from 1,680 in 1970 to 2,056-June, 1972—a difference of plus 376 which would reduce the variance to 4.4 (see appendix, pages 11 and 12 of this brief).

In District 19 (rural Grand Forks County) the city of Emerado grew from 515 in 1970 to 864—a difference of plus 349 which would reduce the variance to 7.4 (see appendix, page 10, of this brief). District 4 (Burke and Mountrail Counties) has had a decline in population. Burke County went from a high of 9,988 in 1930 to a low of 4,739 in 1970. Mountrail has a different pattern. It went from a high of 13,544 in 1930 down to 9,418 in 1950 up to 10,077 in 1960 with a drop in 1970 to 8,437, the current population (see appendix, page 12, of this brief). We do not have any later figures on other districts.

The growth for Districts 11, 16 and 19 covers only a period of three years at the most. It can be validly argued

that the population increase as of now would be greater and will be substantially greater toward the end of this decennial.

The judges of the District Court as well as the masters could have and in all probability did take judicial notice of the population shift and to a degree made allowances for such shifts.

Keeping in mind the constant shift in population, it suggests that it would be somewhat unrealistic to blindly adhere to precise population distribution among the districts when it is known that such population in reality is no longer accurate or representative.

We are presently approaching the mid term of the decennial census which should clearly advise us that no matter what type of plan adopted now would no longer reflect the current situation where the census figures for 1970 are used.

The appellants reside in District 21 and 32. Neither of these districts are under-represented which raises the serious question whether or not they have any standing to challenge the plan fashioned by the court. They may have a valid standing on question of single or multi-member districts. But the same reason would not apply to the population variance in the districts.

The State of North Dakota has a constitutional provision, Section 25, which will permit the electorate to initiate legislation to reapportion the legislature or for that matter to submit constitutional measures as to how it should be accomplished. This is the procedure which should be followed rather than burden the courts.

CONCLUSION

Finally taking into account the many ingredients which go into the representative form of government, the reapportionment plan fashioned by the Court meets the constitutional requirements and should be affirmed.

ALLEN I. OLSON
Attorney General

PAUL M. SAND
First Assistant Attorney General
Attorneys for Appellee

APPENDIX 1

U.S. DEPARTMENT OF COMMERCE
Social and Economic Statistics Administration
BUREAU OF THE CENSUS
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

DEC 1 1 1972

According to the official count of the returns of the Special Census, the population of the City of Cavalier, Pembina County, North Dakota was 2,433 as of November 13, 1972.

Robert L. Hagan

ROBERT L. HAGAN
Deputy Director
Bureau of the Census

APPENDIX 2

PRESIDENT
GEORGE KAPYAN MAYOR LANGDON

NORTH DAKOTA LEAGUE OF CITIES

BOX 578

BISMARCK, NORTH DAKOTA 58501

ARNE BOYUM EXECUTIVE DIRECTOR
PHONE 701 223 8519

July 23, 1974

Mr. Paul Sand
Assistant Attorney General
Capitol Building
Bismarck, ND 58501

Dear Mr. Sand,

Other than Cavalier, the only city in Pembina County which has something close to a documented population census is the City of Walhalla. The mayor had the city auditor do a census in October of 1973. The census was taken after the 1973 activity had shut down for the year giving them something of a permanent population figure. The population of Walhalla at that time was 1636.

Mayor Leon DuBourt gave the above figure to me as the count arrived at by the city auditor.

Sincerely,

Arne Boyum

Arne Boyum
Executive Director
North Dakota League of Cities

APPENDIX 3

U.S. DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

JUN 9 1971

According to the official count of the returns of the NINETEENTH CENSUS OF THE UNITED STATES, on file in the Bureau of the Census, the population of Michigan City, Nelson County, North Dakota was 478 as of April 1, 1970.

CONRAD TAEUBER
Associate Director
Bureau of the Census

APPENDIX 4

U.S. DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

NOV 29 1971

According to the official count of the returns of the Special Census, the population of the City of Grand Forks, Grand Forks County, North Dakota was 40,060 as of October 7, 1971.

CONRAD TAEUBER
Associate Director
Bureau of the Census

U.S. DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

DEC 13 1971

According to the official count of the returns of the Special Census, the population of the City of Emerado, Grand Forks County, North Dakota was 864 as of December 7, 1971.

CONRAD TAEUBER
Associate Director
Bureau of the Census

APPENDIX 5

U.S. DEPARTMENT OF COMMERCE
Social and Economic Statistics Administration
BUREAU OF THE CENSUS
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

JUL 26 1972

According to the official count of the returns of the Special Census, the population of the city of Park River, Walsh County, North Dakota was 2,056 as of June 19, 1972.

CONRAD TAEUBER
Associate Director
Bureau of the Census

U.S. DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

SEP 22 1971

According to the official count of the returns of the Special Census, the population of Lakota, Nelson County, North Dakota was 1,144 as of August 3, 1971.

CONRAD TAEUBER
Associate Director
Bureau of the Census

POPULATION—NORTH DAKOTA

City, Town or Village (Incorporated)	1970	1960	1950	1940	1930	1920	1910
Newburg	125	158	105	119	87	110	102
New England	905	1,095	1,117	895	911	613	
New Leipzig	354	390	447	366	443	378	
New Rockford	1,909	2,177	2,185	2,017	2,195	2,111	
New Salem	943	986	942	875	804	711	621
New Town	1,428	1,586					
Niagara	115	157	163	179	207	199	167
Nome	163	145	217	277	218	267	218
Noonan	493	625	551	520	423	376	153
Northwood	1,139	1,195	1,182	1,063	971	935	769
Oakes	1,742	1,650	1,774	1,665	1,709	1,627	1,499
Oberon	151	248	238				
Omemee	5	11	60	123	170	222	332
Oriska	128	145	135	217	183	300	
Osnabrock	295	289	284	269	244	310	253
Overly	28	65	90	125	154	193	182
Page	367	432	462	428	443	452	479
Palermo	146	188	150	178	205	179	177
Park River	1,680	1,813	1,692	1,408	1,131	1,114	1,008
Parshall	1,246	1,216	935	870	670	376	
Pekin	120	180	221	229	210	197	
Pembina	741	625	640	703	551	802	717
Perth	44	73	124	145	153	218	221
Petersburg	266	272	318	295	310	367	353
Pettibone	173	205					
Pick City	139	191	294				
Pillsbury	59	76	119	161	260	142	
Pingree	78	151	161	167	266	286	
Pisek	184	176	216	242	225	300	312
Plaza	295	386	389	360	409	345	285
Portal	281	351	409	499	512	545	491
Portland	534	606	641	561	600	623	56.
Powers Lake	523	633	565	464	382	261	
Rawson	10	22	72	92			
Ray	776	1,049	721	579	621	563	436
Reeder	306	321	339	263	295	258	198
Regan	74	144	129	149	162	202	
Regent	344	388	405	261	309	262	
Reynolds	236	269	285	315	351	389	412
Rhame	206	254	240	243	356	302	
Richardton	799	792	721	682	710	626	647
Riverdale		1,055					
Robinson	125	155	166	160	185		
Rock Lake	270	300	285	248	279	238	194
Rogers	98	119	150	174	169	173	
Rolette	579	524	451	460	428	409	408
Rolla	1,502	1,395	1,176	1,008	852	676	587
Rosa	125	167					
Rugby	2,889	2,972	2,907	2,218	1,612	1,424	1,030
Ruso	15	31	37	65	104	120	141
Russell	14	26	61	70	94	119	161
Rutland	425	308	309	305	264	291	324
Ryder	211	264	320	467	467	483	338
St. John	367	420	451	417	372	460	424
St. Thomas	508	660	566	503	595	500	513
Sanborn	255	263	324	366	343	391	390
Sanish	75	63	607	455	468	337	
Sarles	148	225	286	302	283	348	246
Sawyer	373	390	284	271	296	241	327
Scranton	360	358	360	277	361	363	214
Selfridge	346	371	343	329	351	153	
Sentinel Butte	125	160	229	256	219	292	
Sharon	201	251	312	371	328	362	304
Sheldon	192	221	267	281	327	321	358
Sherwood	369	360	421	390	455	423	328
Sheyenne	362	423	469	431	417		
Sibley	20	22					
Solen	190						
Souris	151	213	206	259	248	269	267
South Heart	132						
So. West Fargo		3,328	1,032	707			
Springbrook	27	35	51	77	105	93	
Stanley	1,581	1,795	1,486	1,058	936	591	518
Stanton	517	409	571	370	358	325	
Starkweather	193	323	229	295	312	302	246
Steele	696	847	762	721	619	650	500
Strasburg	642	612	733	934	695	663	575
Streeter	324	491	602	647	711	640	
Surrey	361	309					
Sykeston	232	226	272	272	327	367	276
Tagus	14	72	101	140	136	132	105
Tappen	294	326	379	323	368	182	

POPULATION—NORTH DAKOTA

City, Town or Village (Incorporated)	1970	1960	1950	1940	1930	1920	1910
Taylor	162	216	258	251	263	285	
Thompson	891	911	870	876	773		
Thorne			37	45	38	78	105
Tioga	1,667	2,087	456	385	435	320	203
Tolley	162	189	249	177	225	325	240
Tolna	247	291	281	172	174	199	209
Tower City	289	300	292	364	435	447	452
Towner	870	946	956	918	622	610	691
Turtle Lake	713	792	839	632	579	595	
Tuttle	216	255	368	357	383	321	
Underwood	781	819	1,061	613	488	452	422
Upham	272	333	403	243	257	196	206
Valley City	7,843	7,809	6,851	5,917	5,268	4,681	4,606
Van Hook			380	329	372	331	
Velva	1,341	1,320	1,170	1,017	870	836	837
Venturia	77	148	190	257	233	201	
Verona	140	162	139	201	222	258	236
Voltaire	56	70	72	101	61		
Wabek		14	15	18	16	40	
Wahpeton	7,076	5,876	5,125	3,747	3,176	3,069	2,467
Wales	119	151	235				
Walhalla	1,471	1,442	1,463	1,138	700	734	592
Warwick	168	204	155	224	249	250	
Washburn	804	993	913	901	753	556	657
Watford City	1,766	1,565	1,371	1,073	769	760	
Werner	21	59	63	137	213	198	
West Fargo	5,161	93	159	117			
West Fargo Industrial Park	104						
Westhope	705	824	576	460	521	439	592
Wheelock	21	82	101	94	115		
White Earth	128	208	218	272	240	247	264
Wildrose	235	361	430	472	518	449	
Williston	11,280	11,866	7,378	5,790	5,106	4,178	3,124
Willow City	403	496	595	524	577	559	623
Wilton	695	739	796	851	1,001	1,026	437
Wimbledon	337	402	449	357	421	521	571
Wing	223	303	312	235	237		
Winnek	1,275	1,290	1,241	1,112	1,146	1 003	432
Woburn			17	19			
Wolford	81	126	140	206			
Woodworth	139	221	267	245	261	297	
Wyndmere	516	644	627	499	521	170	439
York	102	148					
Zap	271	324	425	524	496	257	
Zeeland	313	427	484	489	418	323	193

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Issued By
BEN MEIER
Secretary of State

Bismarck, N. D.

NORTH DAKOTA
POPULATION
Federal Census
1910 - 1970

COUNTY	Population 1970	1960	1950	1940	1930	1920	1910
Adams	3,832	4,449	4,910	4,664	6,343	5,593	5,407
Barnes	14,969	16,749	16,884	17,814	18,804	18,678	18,066
Benson	8,243	9,436	10,675	12,629	13,227	13,095	12,681
Billings	1,198	1,513	1,555	2,231	740	2,126	*10,186
Bottineau	9,496	11,315	12,160	13,253	14,853	15,169	17,295
Bowman	3,901	4,154	4,801	3,860	5,119	4,768	4,664
Burke	4,739	5,886	6,621	7,653	9,998	9,511	9,064
Burleigh	60,714	54,010	25,672	22,256	19,749	15,578	13,087
Cass	73,653	66,947	58,877	52,949	49,735	41,477	32,935
Cavalier	8,213	10,064	11,840	13,923	14,554	15,555	15,639
Dickey	6,976	8,147	9,121	9,696	10,877	10,499	9,839
Divide	4,564	5,566	5,967	7,086	9,636	9,637	6,015
Dunn	4,895	6,350	7,212	8,376	9,566	8,828	6,362
Eddy	4,103	4,536	5,372	5,741	6,346	6,493	4,930
Emmons	7,200	8,462	9,715	11,699	12,467	11,288	8,796
Foster	4,832	5,361	5,337	5,824	6,353	6,108	5,313
Golden Valley	2,611	3,100	3,499	3,498	4,122	4,832	
Grand Forks	61,102	48,677	39,442	31,518	31,956	29,795	27,889
Grant	5,009	6,248	7,114	8,264	10,104	9,552	
Griggs	4,184	5,023	5,460	5,818	6,589	7,402	6,274
Hettinger	5,975	6,317	7,100	7,457	8,796	7,686	6,557
Kidder	4,962	5,386	6,169	6,692	8,031	7,798	5,962
LaMoure	7,117	8,705	9,498	10,298	11,517	11,564	10,724
Logan	4,285	5,369	6,357	7,561	8,089	7,723	6,165
McHenry	8,977	11,899	12,556	14,034	15,439	15,544	12,837
McIntosh	5,545	6,702	7,590	8,984	9,621	9,010	7,351
McKenzie	6,127	7,296	6,849	5,426	9,769	9,564	5,720
McLean	11,286	14,030	16,824	16,682	17,991	17,266	14,496
Mercer	6,175	6,805	8,676	9,411	9,516	8,224	4,747
Morton	20,310	20,992	19,294	20,184	19,647	18,714	15,289
Mountrail	7,437	10,077	9,418	10,442	13,544	12,140	8,491
Nelson	5,776	7,024	8,090	9,129	10,203	10,362	10,140
Oliver	2,322	2,610	3,091	3,859	4,262	4,425	3,577
Pembina	10,774	12,546	13,990	15,671	16,757	15,177	14,749
Pierce	6,323	7,394	8,226	9,208	9,074	9,283	9,740
Ramsey	12,945	13,443	14,373	15,626	16,252	15,427	15,199
Ransom	7,102	8,078	8,876	10,041	10,983	11,618	10,345
Renville	3,553	4,698	5,405	5,833	7,263	7,778	7,840
Richland	18,009	18,824	19,865	20,519	21,008	20,887	19,659
Rolette	11,549	10,641	11,102	12,583	10,760	10,061	9,858
Sargent	6,527	6,856	7,616	8,692	9,298	9,655	9,502
Sheridan	3,322	4,350	5,253	6,616	7,373	7,935	8,103
Sioux	3,642	3,662	3,896	4,419	4,687	3,308	
Slope	1,454	1,893	2,315	2,932	3,150	4,940	
Stark	19,613	18,451	16,137	15,414	16,540	13,542	12,504
Steele	3,749	4,719	5,145	6,193	6,972	7,401	7,616
Stutsman	22,590	25,137	24,158	23,496	26,100	24,575	18,189
Towner	4,945	5,624	6,360	7,200	8,393	8,327	8,963
Traill	9,571	10,583	11,359	12,300	12,600	12,210	12,545
Walsh	16,751	17,997	18,859	20,747	20,047	19,078	19,491
Ward	58,560	47,072	34,782	31,981	33,587	28,811	25,281
Wells	7,947	9,237	10,417	11,198	13,285	12,957	11,814
Williams	19,301	22,051	16,442	14,315	13,553	12,960	14,234
State Total	617,761	632,446	619,636	641,935	680,845	646,872	577,056

*Includes present Golden Valley and Slope Counties still a part of Billings County in 1910.

"Buy North Dakota Products"

12

APPENDIX 6

POPULATION—NORTH DAKOTA

City, Town or Village (Incorporated)	1970	1960	1950	1940	1930	1920	1910
Abercrombie	262	244	244	216	242	266	295
Adams	284	350	411	355	345	404	388
Alamo	134	182	192	214	211	...	...
Alexander	208	269	302	415	386	...	...
Alice	85	124	162	181	169	...	...
Almont	109	190	200	234	...	...	...
Alsen	201	228	114	312	268	...	...
Ambrose	109	220	280	294	334	389	330
Amenia	80	117	127	104	96	...	...
Amidon	4	84	82	102	141	146	...
Anamoose	301	503	642	478	495	665	669
Aneta	376	481	469	509	568	665	654
Antler	155	310	317	354	318	305	342
Ardoch	70	106	137	119	110	153	271
Argusville	118	118	126	145	118	...	...
Arnegard	161	228	206	232	254	...	...
Arthur	135	225	280	235	232	...	...
Ashley	1,126	1,469	1,422	1,345	1,033	1,009	682
Ayr	48	81	104	107	106	...	...
Balfour	93	159	162	193	197	322	399
Balta	134	162	168	163	...	...	...
Bantry	80	66	126	...	...	...	...
Barney	53	116	...	...	...	...	...
Bartlett	39	59	61	78	67	98	126
Batavia	53	80	102	157	170	158	202
Bathgate	178	176	209	312	292	362	328
Beach	1,124	1,460	1,461	1,178	1,267	1,106	1,062
Belfield	1,126	1,064	1,051	870	653	526	...
Benedict	72	129	127	167	145	196	...
Bergen	24	52	56	87	80	...	...
Berlin	78	78	124	132	135	130	127
Berthold	399	431	459	426	511	458	464
Berwick	73	86	71	92	...	...	...
Beulah	1,314	1,314	1,501	947	913	552	...
Big Bend	...	39	207	...	...	...	...
Binford	142	261	309	311	317	393	376
Bisbee	381	388	361	391	417	500	446
Bismarck	34,703	27,670	18,640	15,496	11,090	7,122	5,443
Bottineau	2,617	2,617	2,268	1,739	1,322	1,172	1,331
Bowbells	763	887	806	767	765	643	651
Bowdon	259	259	248	348	303	306	292
Bowman	1,730	1,730	1,382	967	888	767	491
Braddock	141	176	185	193	216	205	...
Brinsmade	110	110	136	206	199	191	203
Brocket	94	163	212	291	276	240	196
Bucyrus	41	69	111	117	124	178	...
Buffalo	234	234	261	245	242	268	241
Burlington	262	262	...	...	...	...	...
Butte	157	257	272	261	231	...	...
Buxton	321	321	387	404	410	...	...
Calio	29	101	102	98	152	132	...
Calvin	104	104	132	...	...	...	...
Cando	1,466	1,566	1,550	1,282	1,164	1,111	1,332
Canton	130	130	139	148	126	101	116
Carbin	198	198	194	222	244	244	257
Carrington	2,438	2,438	2,101	1,850	1,717	1,452	1,217
Carson	501	501	493	473	356	277	...
Casselton	1,894	1,894	1,873	1,368	1,253	1,528	1,553
Cathay	110	110	209	189	235	185	226
Cavalier	1,423	1,423	1,469	1,105	950	819	652
Cayuga	195	195	178	196	219	192	176
Center	476	476	492	509	593	...	...
Churchs Ferry	169	161	123	144	295	353	467
Cleveland	169	169	181	246	273	341	...
Clifford	109	109	158	...	...	...	...
Cogswell	365	365	393	78	426	445	418
Colfax	98	98	...	...	...	...	...
Columbus	469	672	525	508	516	72	226
Conway	57	67	107	120	100	8	194
Cooperstown	1,489	1,424	1,189	1,077	1,053	1,0	1,019
Courtenay	144	168	238	297	360	340	539
Crary	199	195	235	267	278	307	279
Crocus	...	...	...	...	35	37	...
Crosby	1,759	1,689	1,404	1,271	1,147	1,147	706
Crystal	372	372	439	428	314	349	376
Davenport	142	143	150	147	205	214	226
Dawson	264	264	240	263	306	293	...
Daysy	216	216	196	216	281	293	266
Deering	119	117	136	148	192	142	150
Des Lacs	197	185	180	197	205	188	...
Devils Lake	7,018	8,299	8,427	6,204	5,519	5,110	5,187

POPULATION—NORTH DAKOTA

City, Town or Village (Incorporated)	1970	1960	1950	1940	1930	1920	1910
Dickey	118	143	165	203	168	190	187
Dickinson	12,905	9,971	7,469	5,839	5,025	4,123	2,678
Dodge	121	226	251	234	204	173	...
Dogden	...	...	...	...	...	262	320
Donnybrook	163	196	207	215	259	267	297
Douglas	214	219	236	313	248	284	171
Drake	636	752	831	654	544	517	348
Drayton	1,035	940	876	688	602	637	587
Dunn Center	307	350	346	338	276	317	...
Dunseith	811	1,017	713	719	484	374	478
Dwight	94	101	129	168	104	139	...
East Fairview	...	...	...	...	155	176	...
Eckman	9	8	55	66	79	64	84
Edgeley	888	892	943	803	821	803	306
Edinburg	315	330	343	378	284	278	300
Edmore	396	405	468	452	396	501	344
Egeland	96	190	248	276	333	306	266
Elgin	839	944	882	883	805	429	...
Ellendale	1,957	1,800	1,759	1,517	1,264	1,334	1,389
Elliot	58	62	87	118	106	...	...
Emerado	315	328	...	...	...	...	...
Enderlin	1,111	1,596	1,504	1,593	1,439	1,919	1,540
Epping	160	153	158	154	183	116	...
Esmond	410	420	475	449	313	513	535
Fairdale	117	126	131	187	171	192	160
Fairmount	413	503	600	705	611	706	367
Fargo	...	46,662	38,256	32,580	28,619	21,961	14,331
Fessenden	815	920	917	902	738	731	713
Fingal	168	190	210	300	324	...	...
Finley	959	808	671	677	587	599	616
Flasher	486	518	413	387	346	287	...
Flaxton	285	375	436	362	423	374	391
Forbes	138	138	204	268	265	293	321
Fordville	341	367	376	439	442	320	...
Forest River	161	191	236	207	198	226	232
Forman	596	630	466	500	386	402	352
Fort Clark	...	...	...	...	...	86	...
Fort Yates	1,153	...	...	...	...	...	...
Fortuna	208	185	181	214	196	198	...
Fredonia	109	141	268	209	394	296	...
Fullerton	139	141	206	184	206	262	266
Gackle	450	522	504	537	493	424	...
Galesburg	191	166	169	...	...	...	...
Gardena	94	113	116	125	120	99	119
Gardner	106	107	136	103	108	...	...
Garrison	1,401	1,794	1,899	1,117	1,024	714	408
Gascoyne	41	59	76	48	97	60	...
Gilby	...	281	...	...	...	...	...
Gladstone	87	185	224	278	...	...	...
Glenburn	363	363	281	190	263	228	268
Glenfield	127	129	...	...	...	...	...
Glen Ullin	1,210	1,210	1,324	976	950	875	921
Golden Valley	286	286	239	400	294	369	...
Goliva	164	162	174	...	...	...	...
Goodrich	392	392	448	476	468	476	410
Grafton	6,888	6,988	4,901	4,070	3,134	2,512	2,229
Grand Forks AFB	...	...	...	...	...	...	...
Grand Forks	34,451	39,436	26,226	20,228	17,112	14,010	12,478
Grandin	147	156	158	172	...	...	...
Graner	14	27	57	112	...	...	...
Granville	400	404	447	450	394	455	...
Great Bend	164	169	195	169	142	197	...
Gretora	444	525	425	482	358	...	...
Gwinner	243	197	...	...	...	...	...
Hagne	197	228	442	364	315	183	...
Halliday	592	477	395	305	289	...	...
Hamberg	64	124	164	187	...	...	...
Hamilton	217	241	255	151	200	213	...
Hampden	71	71	203	197	222	199	...
Hankinson	1,285	1,409	1,429	1,460	1,477	1,603	...
Hanks	78	115	192	213	...	...	...
Hannaford	277	313	405	351	431	340	...
Hannah	253	257	261	262	...	...	...
Hanoboro	143	134	196	176	218	...	...
Harvey	2,365	2,327	1,851	2,157	1,590	1,443	...
Hatton	856	891	933	804	828	666	...
Havana	206	267	265	271	319	387	...
Haynes	111	145	210	167	113	...	...
Haseltun	451	453	500	446	382	...	...
Hazen	1,222	1,230	662	689	620	...	...
Hebron	1,340	1,412	1,267	1,348	1,374	597	...
Hettinger	1,769	1,762	1,138	1,292	817	766	...

POPULATION—NORTH DAKOTA

City, Town or Village (Incorporated)	1970	1960	1950	1940	1930	1920	1910
Hillsboro	1,309	1,278	1,331	1,338	1,317	1,183	1,237
Hoople	330	324	447	346	325	250	175
Hope	364	390	470	474	585	699	909
Horace	276	178	190	...	...	...	...
Hunter	362	448	417	414	406	494	366
Hurdsfield	139	183	223	258	256	...	...
Inkster	198	282	304	310	257	368	353
Jamestown	15,385	15,163	10,697	8,790	8,187	6,627	4,358
Jud	110	156	175	202	140	178	99
Karlsruhe	172	221	242	289	258	...	...
Kathryn	109	142	200	229	274	289	...
Kenmare	1,937	1,696	1,712	1,528	1,494	1,446	1,437
Kensal	263	334	376	356	420	415	456
Kermit	...	...	...	53	26	37	106
Kief	48	97	135	159	139	207	...
Killdeer	615	765	698	650	495	512	...
Kindred	695	580	504	450	429	334	...
Knox	104	122	190	189	177	173	330
Kramer	125	175	198	220	190	172	191
Kulm	625	664	767	734	742	725	648
Lakota	1,144	1,066	1,032	907	860	959	1,023
LaMoure	951	1,068	1,010	990	889	1,014	929
Landa	61	110	132	149	140	...	...
Langdon	3,923	2,151	1,838	1,646	1,221	1,228	1,214
Lankin	221	302	287	283	247	334	341
Lansford	298	382	352	360	383	357	456
Larimore	1,469	1,714	1,374	1,232	978	1,089	1,274
Larson	35	62	59	79	89	114	...
Lawton	123	159	211	210	253	227	...
Leal	70	70	79	102	105	88	41
Leeds	626	797	778	782	735	704	682
Lehr	297	381	394	536	458	362	182
Leith	92	110	160	166	174	158	...
Leonard	233	232	...	...	...	...	...
Lidgerwood	1,096	1,081	1,147	1,042	1,029	1,065	1,019
Lignite	358	358	230	235	217	214	...
Linton	1,695	1,626	1,675	1,602	1,192	1,011	644
Lisbon	2,698	2,093	2,021	1,997	1,650	1,855	1,758
Litchville	278	345	408	430	410	598	484
Lorma	59	50	53	256	293	...	...
Loraine	48	54	70	74	92	74	...
Ludden	48	59	96	150	164	132	109
Luverne	98	109	154	197	227	226	...
McClusky	699	751	850	924	719	646	517
McHenry	132	155	180	250	219	299	398
McVille	583	551	626	548	513	546	310
Maddock	740	740	691	651	557	574	574
Makoti	359	214	219	212	278	...	...
Mandan	11,093	10,525	7,298	6,685	5,037	4,336	3,872
Manfred	36	98	138	...	...	...	...
Manvel	363	313	278	209	183	...	...
Mapleton	219	180	169	180	195	198	207
Marion	252	309	298	242	258	294	241
Marmarth	247	319	469	656	721	1,318	790
Martin	120	146	171	228	211	...	...
Max	391	410	465	423	500	473	285
Maxbass	174	218	259	215	217	147	240
Mayville	2,264	2,168	1,790	1,351	1,199	1,218	1,070
Maza	29	31	82	66	70	...	...
Medina	456	545	564	560	497	415	347
Medora	120	123	...	...	...	...	...
Menoken	150	154	214	...	...	...	...
Merricourt	72	86	105	153	120	70	75
Michigan City	478	451	496	451	433	491	419
Milnor	615	658	674	677	564	680	641
Milton	398	364	322	310	329	393	416
Minnewaukan	466	428	503	621	586	564	510
Minot	32,290	30,604	22,032	16,577	16,098	10,476	6,188
Minot Base	12,072	...	...	...	...	...	...
Minto	636	642	592	630	585	602	701
Mohall	960	956	1,073	687	676	651	482
Monango	112	133	138	175	211	231	178
Montpelier	158	97	105	133	165	146	...
Mooreton	158	164	161	146	147	123	...
Mott	1,185	1,463	1,583	1,220	1,038	723	...
Mountain	146	214	218	205	...	...	...
Munich	249	213	248	216	260	248	...
Mylo	51	103	110	85	134	140	98
Napoleon	1,036	1,078	1,070	982	709	854	...
Neche	452	546	615	565	502	528	539
Nekoma	94	143	140	194	191	189	156

(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CHAPMAN ET AL. *v.* MEIER, SECRETARY OF STATE OF NORTH DAKOTA

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA

No. 73-1406. Argued November 13, 1974—
Decided January 27, 1975

This case involves the issue of the constitutionality of a federal-court-ordered reapportionment of the North Dakota Legislative Assembly. Following protracted state and federal litigation challenging various apportionment plans, statutes, and state constitutional provisions, including a federal action in which a three-judge District Court in 1965 approved a reapportionment plan that included five multimember senatorial districts, appellants brought the present federal action against appellee, the Secretary of State, alleging that substantial population shifts had occurred and that the 1965 plan no longer met equal protection requirements, and requesting the court to order apportionment based on the 1970 census figures, to provide for single-member districts, to declare the 1965 plan invalid, and to restrain appellee from administering the election laws under that plan. A three-judge District Court, holding that such plan failed to meet constitutional standards, approved another plan that called for five multimember senatorial districts and that contained a 20% population variance between the largest and smallest senatorial districts. *Held:*

1. This Court has jurisdiction of the appeal under 28 U. S. C. § 1253. Although the challenged reapportionment plan was court ordered, its enforcement is based on the State's Constitution and statutes, its effectuation directly depends on the state election law machinery, and the plan itself is a court-imposed replacement of state constitutional provisions and reapportionment statutes. Pp. 11–12.

2. Absent persuasive justification, a federal district court in ordering state legislative reapportionment should refrain from

Syllabus

imposing multimember districts upon a State. Here the District Court has failed to articulate a significant state interest supporting its departure from the general preference for single-member districts in court-ordered reapportionment plans that this Court recognized in *Connor* v. *Johnson*, 402 U. S. 690, and unless the District Court can articulate such a "singular combination of unique factors" as was found to exist in *Mahan* v. *Howell*, 410 U. S. 315, 333, or unless the 1975 Legislative Assembly appropriately acts, the court should proceed expeditiously to reinstate single-member senate districts. Pp. 12–20.

3. A population deviation of such magnitude in a court-ordered reapportionment plan as the 20% variance involved here is constitutionally impermissible absent significant state policies or other acceptable considerations requiring its adoption. The burden is on the District Court to elucidate the reasons necessitating any departure from approximate population equality and to articulate clearly the relationship between the variance and the state policy furthered. Here the District Court's allowance of the 20% variance is not justified, as the court claimed, by the absence of "electorally victimized minorities," by the sparseness of North Dakota's population, by the division of the State caused by the Missouri River, or by the asserted state policy of observing geographical boundaries and existing political subdivisions, especially when it appears that other, less statistically offensive, reapportionment plans already devised are feasible. Pp. 20–25.

372 F. Supp. 371, reversed and remanded.

BLACKMUN, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 73–1406

Daniel Chapman and Jacque Stockman, Appellants, *v.* Ben Meier, etc.

On Appeal from the United States District Court for the District of North Dakota.

[January 27, 1975]

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue of the constitutionality of a federal-court-ordered apportionment of the North Dakota Legislature. That State, like many others, has struggled to satisfy constitutional requirements for legislative apportionment delineated in *Baker* v. *Carr*, 369 U. S. 186 (1962); *Reynolds* v. *Sims*, 377 U. S. 533 (1964); *WMCA, Inc.* v. *Lomenzo*, 377 U. S. 633 (1964); *Maryland Committee* v. *Tawes*, 377 U. S. 656 (1964); *Davis* v. *Mann*, 377 U. S. 678 (1964); *Roman* v. *Sincock*, 377 U. S. 695 (1964); *Lucas* v. *Colorado General Assembly*, 377 U. S. 713 (1964); and other cases. This litigation is the culmination of that struggle, totally ineffectual on the legislative side, during the past decade.

I

The State's Constitution and its Statutes

North Dakota's original Constitution, adopted at the State's admission into the Union in 1889, is still in effect. It has been amended, of course, from time to time. Since 1918, § 25 thereof has read: "The legislative power of this state shall be vested in a legislature consisting of a

senate and a house of representatives." N. D. Const. Art. II, § 25, 13 N. D. C. C., p. 141 (1960), and 1973 Supp., p. 13. That legislative power for 70 years has been subject to the initiative and the referendum. *Ibid.* The Constitution has further provided that the State's Senate "shall be composed of forty-nine members," § 26, elected for a four-year term, § 27, with one-half thereof elected each two years, § 30, and that no one shall be a Senator unless he is a qualified elector of the senatorial district, has attained the age of 25 years, and has been a resident of the State for the two years next preceding the election, § 28. Since 1960, § 29 has read:

> "Each existing senatorial district as provided by law at the effective date of this amendment shall permanently constitute a senatorial district. Each senatorial district shall be represented by one senator and no more."[1] Laws 1959, c. 438; Laws 1961, c. 405.

The document also states that the House of Representatives "shall be composed of not less than sixty, nor more than one hundred forty members," § 32, elected for a two-year term, § 33, and that no one shall be a representative unless he is a qualified elector of the district, has attained the age of 21 years, and has been a resident of the State for the two years next preceding the election, § 34. Section 35 provides for at least one representative

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[1] Prior to the 1960 amendment, § 29 read:

"The legislative assembly shall fix the number of senators, and divide the state into as many senatorial districts as there are senators, which districts, as nearly as may be, shall be equal to each other in the number of inhabitants entitled to representation. Each district shall be entitled to one senator and no more, and shall be composed of compact and contiguous territory; and no portion of any county shall be attached to any other county, or part thereof, so as to form a district. The districts as thus ascertained and determined shall continue until changed by law."

for each senatorial district and for as many representatives as there are counties in the district; states that the Legislative Assembly, after each federal decennial census, shall apportion "the balance of the members of the House of Representatives," and, when the Legislative Assembly fails in its apportionment duty, places the task of apportioning the House in a designated group of officials of the State.[2]

There have been complementary statutory provisions. An apportionment effected by Laws 1931, c. 7, 10

[2] Section 35 reads in full as follows:

"Each senatorial district shall be represented in the House of Representatives by at least one representative except that any senatorial district comprised of more than one county shall be represented in the House of Representatives by at least as many representatives as there are counties in such senatorial district. In addition the Legislative Assembly shall, at the first regular session after each federal decennial census, proceed to apportion the balance of the members of the House of Representatives to be elected from the several senatorial districts, within the limits prescribed by this Constitution, according to the population of the several senatorial districts. If any Legislative Assembly whose duty it is to make an apportionment shall fail to make the same as herein provided it shall be the duty of the chief justice of the supreme court, attorney general, secretary of state, and the majority and minority leaders of the House of Representatives within ninety days after the adjournment of the legislature to make such apportionment and when so made a proclamation shall be issued by the chief justice announcing such apportionment which shall have the same force and effect as though made by the Legislative Assembly."

Prior to the 1960 amendment, § 35 called for the Legislative Assembly (seemingly at least every 10 years) "to fix by law" the number of senators and the number of representatives "within the limits prescribed by this constitution" and to "proceed to reapportion the state into senatorial districts as prescribed by this constitution, and to fix the number of members of the house of representatives to be elected from the several senatorial districts," with the proviso that at any regular session "the legislative assembly may . . . redistrict the state into senatorial districts, and apportion the senators and representatives respectively."

N. D. C. C. § 54–03–01 (1960 ed.), was in effect for over 30 years despite the mandate of § 35 of the Constitution that apportionment be effected after each federal census.

II

Prior Litigation

A. Things began to stir in North Dakota even prior to this Court's decision in *Baker* v. *Carr* in 1962. The State's Legislative Assembly of 1961 had failed to apportion the House following the 1960 census. After *Baker* had been decided at the District Court level, 179 F. Supp. 824 (MD Tenn. 1959), and between the argument and reargument of the case here, the Supreme Court of North Dakota dismissed an original action for a prerogative writ to enjoin its Chief Justice from issuing the apportionment proclamation which would have announced the conclusions of the statutorily designated "apportionment group" that were then anticipated. The petition asserted that the group's plan would apportion the House in an unconstitutional manner and not according to population. The Supreme Court ruled that the function of the group was legislative; that it had not yet completed its work; that it was performing a function the Legislative Assembly should have performed; and that, until the proclamation was issued, the group's action was not subject to challenge in the courts. *State ex rel. Aamoth* v. *Sathre,* 110 N. W. 2d 228 (1961).

B. Citizens of North Dakota then sought declaratory and injunctive relief in federal court under the Civil Rights Acts, 42 U. S. C. §§ 1983 and 1988. By this time the State's Chief Justice had issued the proclamation. A three-judge District Court held that the presence of the proclamation eliminated the aspect of prematurity that had characterized the earlier challenge in the state court. But the "basic issues," the court concluded with one

dissent, had not been presented to the Supreme Court of North Dakota. "We believe that court should have the opportunity of passing on all questions herein." The court, accordingly, abstained from passing upon those issues; it stayed further proceedings before it, but did not dismiss the action. *Lein* v. *Sathre*, 201 F. Supp. 535, 542 (ND 1962).

C. The plaintiffs in the federal case promptly took to the Supreme Court of North Dakota their attack upon the plan adopted by the apportionment group. That court assumed jurisdiction. *State ex rel. Lein* v. *Sathre*, 113 N. W. 2d 679, 681 (1962). It noted that no question arising under the United States Constitution was presented, *id.*, at 681–682, and that it was not concerned with the validity of the allotment of one representative to each senatorial district, as prescribed by the first sentence of § 35 of the Constitution, *id.*, at 683. The court recognized that there was inherent in a constitutional direction to apportion according to population "a limited discretion to make the apportionment that will approach, as nearly as is reasonably possible, a mathematical equality." *Id.*, at 685. It then went on to hold that the apportionment made by the group "violates the constitutional mandate of apportionment according to the population of the several districts and is void," *id.*, at 687, and that the apportionment effected by the 1931 statute continued to be the law until superseded by an apportionment valid under § 35 or under a further amendment of the Constitution. *Id.*, at 687–688.

D. The same plaintiffs then turned again to the federal court. The three-judge court, with one judge dissenting, denied the request for injunctive relief on the ground that the only challenge before it was to the apportionment group's plan, and that the 1931 apportionment was not challenged. *Lein* v. *Sathre*, 205 F. Supp.